IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.81 OF 2006

Shri Sunil Shivaji Nimbalkar. ..Applicant.

V/s.

State of Maharashtra & Ors. ..Respondents.

WITH

CIVIL REVISION APPLICATION NO.82 OF 2006

Shri Shivaji Raosaheb Nimbalkar. ..Applicant.

V/s.

State of Maharashtra & Ors. ..Respondents.

WITH

CIVIL REVISION APPLICATION NO.83 OF 2006

Shri Anil Shivaji Nimbalkar. ..Applicant.

V/s.

State of Maharashtra & Ors. ..Respondents.

Mr.V.S.Talkute for Applicant.

Mr..D.P.Patil, AGP for respondent Nos.1..

CORAM: A.M.KHANWILKAR,J

DATE : JULY 24, 2006.

P.C.:

1. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent.

2. Mr. Patil waives notice for respondent No.1. As short question is

involved hearing of this revision application is taken for final disposal forthwith by consent.

3. This revision application takes exception to the order passed by the Sub Divisional Officer dated 24th March, 2005 rejecting the request of the applicant to forward reference under section 18 of the L.A.Act in respect of the award passed dated 20th February, 2002. The Sub Divisional Officer has rejected that request on the finding that the applicant was served with notice under section 12(2) between 6th January, 2005 to 10th Junuary, 2005, whereas the subject application was filed on 28th February, 2005 which is beyond limitation.

4. The case of the applicant on the other hand is that the applicant was served on 18th January, 2005. If that date is accepted, the limitation period would start running from that date, in which case reference application filed on 28th February, 2005 was within limitation. In the reply affidavit filed before this court Sub-divisional officer on affidavit dated 20th July, 2006 has stated that the Notice under section 12(2) came to be served on the claimant between 6th January, 2005 to 10th January, 2005. To support this position, copy of the report of the Sub-divisional officer dated 10th January, 2005 has been placed on record. Indeed, from this report, it is seen that against the name of the applicant signature of the applicant is appearing, however, the date on which service is actually effected has not been noted. What is intriguing is that although the report mentions that the claimants have served between 6th January, 2005 to 10th January, 2005, against the name of the claimant No.25 date of service as noted appears to be 16th January, 2005. This discrepancy is sought to be explained by the learned AGP by relying on the report which mentions that the said claimant was served on a later date and that fact cannot come in the aid of the present claimants. Suffice it to observe that both sides are taking different

position with regard to the factum of service of notice. The fact noted in the official record, which is produced will have to be explained by the concerned official in evidence. In other words, factum of service of notice under section 12(2) of the Act on the applicant herein is a mixed question of fact and law. If it is so, that will have to be resolved after allowing parties to adduce evidence in support of their respective cases. Thus understood, it was not open to the Sub-divisional officer to reject the application of the applicant on the ground that the same was beyond limitation, as it is a matter of evidence.

5. Accordingly, all these revision applications succeed. The applications filed by the respective applicants/claimants to stand restored to the file of the Sub-Divisional officer for being processed further in accordance with the law.